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Application Number

09/920,961

Filing Date

08/03/2001

First Named Inventor

Edwin Lyda

Art Unit

2623

Examiner Name

Sheleheda, James R.

Attorney Docket Number

LYDA-01

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

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Fee Attached

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Amendment/Reply

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After Final

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Extension of Time Request

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Express Abandonment Request

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Information Disclosure Statement

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Certified Copy of Priority Document(s)

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Incomplete Application☐Reply to Missing Parts
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Ahnlin and Gaskin

Signature

Mary J. Gaskin

Printed name

Mary J. Gaskin

Date

September 21, 2007

Reg. No.

30,381

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Mary J. Gaskin

Date

9/21/07

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

In re: Application Serial No.: 09/920,961

Filing Date: 08/03/2001

First Named Inventor: Edwin Lyda

Group Art Unit: 2623

Examiner's Name: Sheleheda, James R.

Attorney Docket No.: LYDA-01

APPELLANT EDWIN LYDA'S REPLY BRIEF



I. STATUS OF CLAIMS

Claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 stand rejected.

Claims 8 through 12, 16, and 22 have been cancelled.

Appellant is appealing the rejections of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

The text of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 is set out in the Appendix to appellant's Main Brief.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1 through 7, 13 through 15, 17 through 22, and 23 through 25 fail to comply with the enablement requirement of 35 U.S.C. §112 – Grounds were withdrawn by Examiner.
- B. Whether claims 1, 2, 13 through 15, 17, 20, 21, and 23 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Ferris *et al.* (WO 99/04568).
- C. Whether claim 3 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* (WO 99/04568 in view of Dobson U.S. 6,704,317).
- D. Whether claims 4, 5, 6, 18 and 24 are unpatentable under 35 U.S.C. §103(a) as being obvious over Ferris *et al.* (WO 99/04568).
- E. Whether claim 7 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* (WO 99/04568) in view of Yoshinoba *et al.* (U.S. 5,721,584).
- F. Whether claims 19 and 25 are unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* in view of Lewis *et al.* (U.S. 5,303,042).

III. ARGUMENT

(NOTE: In his answer, the Examiner restated the original Examiner's rejections exactly as set out in an office action dated November 2, 2006, repeating phrases parsed imprecisely and even including typographical errors. Appellant has already addressed those comments in his Main Brief which responded to that office action; therefore, the Argument section deals only with the Examiner's comments from page 12 through page 20 of his Answer.)

A. Rejection of claims 1-7, 13-15, and 23-25 Under 35 U.S.C. §112 as Failing to Comply With the Enablement Requirement

This ground of rejection has been withdrawn by the Examiner.

B. Rejection Under 35 U.S.C. §102(b) As Being Anticipated by Ferris *et al.*

The Examiner responded to Appellant's arguments that Ferris differs from his invention because the Ferris device must receive display data before a user may respond and the user is limited to "responding" to the data on the display. The Examiner's position appears to be based on his belief that Appellant's "input mechanism" is merely a key-pad for inputting data (he cites page 8, lines 1-4). He then states that Ferris' keypad operates in the same manner as Appellant's keypad, receiving no signals eliciting a response by the user.

Appellant draws the Examiner's attention to the fact that the user input mechanism encompasses more than simply the various keys on the keypad; it describes the unit providing input capability. Ferris' input mechanism differs because it must incorporate a display to which the user enters his responses (See Fig. 1, Figs. 2A - 2H).

(Appellant acknowledges that some confusion has resulted from the language of claims 2, 3, 4 and 5, which, as he pointed out, contains the following clause: "the input mechanism is selected from the group consisting of a key pad and voice recognition apparatus." Due to the placement of the clause "the mechanism operating without receiving signals eliciting a response by the user," the claims should read "the input mechanism comprises a key pad or voice recognition apparatus," which would properly indicate that the input mechanism does not consist exclusively of a keypad or voice recognition apparatus.)

The Examiner's answer then suggests that, to read over Ferris, the claim should read "the response device operating without receiving signals eliciting a response by the user" (Examiner's Answer, p. 14, ll. 1-2). On September 18, 2007, Appellant's attorney spoke with the Examiner regarding the meaning of this statement. If entry of such an amendment would put the application in condition for allowance, Appellant would request that the Examiner withdraw the final rejection, reopen prosecution, permit Appellant to amend the claims accordingly, and then issue an allowance.¹

¹Appellant would then propose the following amendment to the independent claims (only amended portions are shown:

1. An electronic response device other than a personal computer, the response device operating without receiving signals, eliciting a response by a user, the response device configured to allow [[a]] the user to send data over a standard communication system in response to a program received apart from the response device, the response device comprising:

a user input mechanism for entry of user input and responses, ~~the mechanism operating without receiving signals eliciting a response by the user,~~

....

13. ... providing a ~~user input~~ response device other than a personal computer, the device operating without receiving signals eliciting a response by the audience member, the device having input capabilities;

having the audience member input the program identifier code into the ~~user input~~ response device;

The Examiner has suggested that the Ferris device allows a user to respond to a program received apart from the device because the user can purchase products as a result of offers synchronized with a television broadcast. However, the user of the Ferris device is still not able to “respond” to the program itself, which is the broadcast received apart from the device.

The Examiner also argues that Ferris discloses entering a program identifier code. However, Appellant’s claim requires a user to input a program identifier code, for the program received apart from the device. The two examples cited by the Examiner refer to having a user press the “BUY” or “INFO” button in response to data displayed on the device, in order to initiate a purchase or to get further information about a product, or to have a user track a package. None of these instances meet the claim limitation, which requires input of a program identifier code for a program received apart from the response device.

The Examiner’s discussion of the claim terms “correlated” and “having the presenter of the program respond to the audience member” involve equally tortured examples.

Appellant’s invention, either as presently claimed or, if the claims are amended

-
- having the audience member input responses into the ~~user input~~ response device;
....
20.
providing a ~~user input response~~ device other than a personal computer, the device ~~generating~~
operating without receiving signals eliciting a response by a user, the device having input
capabilities;
- having an audience member input the program identifier code into the ~~user input~~ response device;
having the audience member input responses into the ~~user input~~ response device;
....

according to the Examiner's suggestion, should be allowable over Ferris.

- C. Rejection of Claim 3 Under 35 U.S.C. §103(a) As Being Obvious Over Ferris *et al.* WO99/04568 in view of Dobson (U.S. 6,704,317)

Appellant reiterates the arguments made in the Main Brief.

- D. Rejection Under 35 U.S.C. §103(a) As Being Obvious Over Ferris *et al.* (WO99/04568)

Appellant would point out that nothing in Ferris discloses having a “transmitter configured to call telephone numbers each of the telephone numbers having been associated with a particular response to the program” (italics mine). The example from Ferris describes forwarding credit card details, held in the user database, to a sponsoring party to formulate a financial transaction. Because that example has no connection with utilizing telephone numbers much less different numbers depending on the response, the Examiner modified Ferris to use POTS. The combination is not suggested by Ferris, and the example used does not make the present invention obvious

- E. Rejection of Claim 7 Under 35 U.S.C. §103(a) As Being Unpatentable Over Ferris *et al.* (WO99/04568 in View of Yoshinoba *et al* (U.S. 5,721,584)

See discussions above, related to claim 1.

- F. Rejection of Claims 19 and 25 Under 35 U.S.C. §103(a) As Unpatentable Over Ferris *et al* In View of Lewis *et al* (U.S. 5,303,042)

The Examiner stated Ferris discloses” having an audience member log in to a remote computer system” However, the example he cites is using a PIN to unlock a handset, and he again refers to the phrase “logging the interaction in a user database,” which, as

appellant has previously pointed out, refers simply to tracking user actions. The combination relied on by the Examiner has been discussed, and discounted, in Appellant's Main Brief.

G. Conclusion

For the foregoing reasons, Appellant submits that the Examiner's rejection of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 is in error and that it should be reversed. Appellant hereby requests that the Board withdraw the Examiner's rejection and allow claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

IV. ADDITIONAL MATTERS

Appellant would like to have the Board take notice of some of the filings in this case related to several baffling events that have occurred.

In a Request for Replacing Examiner; Expediting Appeal to the Director, which was filed on April 6, 2007, Appellant's attorney laid out some of these events. (See Appendix A). Appellant received no response to the Request, and the Appeal was not expedited.

After Appellant's attorney called the Examiner, well after the Answer was due, Mr. Chris Kelley called Appellant's attorney. The Interview Summary filed by Chris Kelley (See Appendix B) indicates that the phone call merely related to the Request. Appellant's attorney's Interview Summary (See Appendix C) states her recollection of the conversation, which differs from Mr. Kelley's.

Subsequently, Appellant's attorney attempted to call Director Wanda Walker to discuss the conflicting information in the two Interview Summaries on file. Ms. Allyson Despertt indicated that Director Walker would be returning the call. When no call was

forthcoming, Appellant's attorney called Ms. Desperdt again and was informed Mr. James Brody would be returning the call to discuss the matter. No call was ever received from either Director Walker or Mr. Brody.

Respectfully submitted:

Sept. 21, 2007
Date

Mary J. Gaskin
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Attorney for Appellant, Edwin Lyda

cc: Mr. Edwin Lyda

APPENDIX

A. Request For Replacing Examiner; Expediting Appeal

APPENDIX

B. Interview Summary (Examiner's)

Interview Summary	Application No.	Applicant(s)	
	09/920,961	LYDA, EDWIN	
	Examiner	Art Unit	
	Chris Kelley	2623	

All participants (applicant, applicant's representative, PTO personnel):

(1) Chris Kelley. (3)_____.

(2) Mary Gaskin. (4)_____.

Date of Interview: 20 July 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: _____.

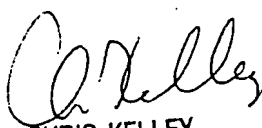
Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Ms Gaskin was informed that the letter to the director on 4/6/07 is being treated as a petition to remove the examiner. This is dismissed as moot since the examiner has been changed.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


 CHRIS KELLEY
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 2600

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

APPENDIX

C. Interview Summary (Appellant's)

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Application Number

09/920,961

Filing Date

08/03/2001

First Named Inventor

Edwin Lyda

Art Unit

2623

Examiner Name

Sheleheda, James R.

Attorney Docket Number

LYDA-01

ENCLOSURES (Check all that apply)☐

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under 37 CFR 1.52 or 1.53☐

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Power of Attorney, Revocation

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(Appeal Notice, Brief, Reply Brief)☐

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Interview Summary

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Annelin and Gaskin

Signature

Mary J. Gaskin

Printed name

Mary J. Gaskin

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Aug. 17, 2007

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Mary J. Gaskin

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Aug. 17, 2007

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In re Application of: Edwin Lyda

Application No.: 09/920,961

Filed: 08/03/2001

For: Distance Learning System

Date: August 17, 2007

Group Art Unit: 2623

Examiner: Sheleheda, James R.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

INTERVIEW SUMMARY

All Participants:

1. Chris Kelley
2. Mary Gaskin

Date of Interview: July 20, 2007

Type: Telephonic

Exhibit shown or demonstration conducted: Not applicable

Claim(s) discussed: Not applicable

Identification of prior art discussed: Not applicable

Agreement with respect to the claims was was not reached.

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Mary J. Gaskin

Substance of Interview:

Prior to the telephone interview, I had left a message with Examiner Sheleheda requesting him to call me. Instead I received a call from Examiner Kelley. I inquired about the fact that I had not yet received the Examiner's Brief in response to Applicant's Appeal Brief, which had been filed in December 2006, and which was amended (for two minor issues) and re-filed on April 2, 2007. The information online showed that the brief had been forwarded to the Examiner in early May. At the very latest, the Examiner's Brief should have been sent to me by early July 2007. Examiner Kelley indicated I would receive the Examiner's Brief "by the end of the next week" (July 27). (In fact, the Examiner's Brief was not mailed until August 3, 2007). I expressed dissatisfaction that the Examiner's Brief would be late (once again), particularly in view of the fact that, on April 6, 2007, I had filed a Petition For Replacing Examiner; Expediting Appeal, directed to Andrew Faile's attention, to which I had received no reply. At that point, Examiner Kelley raised the fact that the Examiner had been changed; however, I indicated that I was aware of the fact that the previous examiner, Hai Tran, had been promoted to an SPE position outside the Art Unit, and that fact had necessitated the change, not my petition.

In his interview summary, the Examiner indicated that my petition had been dismissed (this is my first notice of that fact) as "moot since the examiner has been changed." However, he never addressed the fact that the petition had also requested that the appeal be expedited to as great an extent as possible in view of the lengthy delays associated with the case. Clearly, the appeal has NOT been expedited at all; as usual the Examiner's Brief was overdue when I finally received it.

Date: August 17, 2007

Respectfully submitted,



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<p>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</p> <p>Firm Name: Annalin and Gaskin</p> <p>Signature: <i>Mary J. Gaskin</i></p> <p>Printed name: Mary J. Gaskin</p> <p>Date: Aug. 17, 2007</p> <p>Reg. No.: 30,381</p>					
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<p>This collection of information is required by 37 CFR 1.6. The information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including amount of time you require to complete this form and suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND PERS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p> <p>If you need assistance in completing this form, call 1-800-PTO-9196 and select option 2.</p>					
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Art Unit	2623
Examiner Name	Tran, Hai V.
Attorney Docket Number	LYDA-01

ENCLOSURES (Check all that apply)

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<p>Remarks</p> <p>ATTN: To Andrew Faile, Director, Art Unit 2623</p>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Annelin and Gaskin		
Signature	<i>Mary J. Gaskin</i>		
Printed name	Mary J. Gaskin		
Date	April 6, 2007	Reg. No.	30,381

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Signature	<i>Mary J. Gaskin</i>		
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In re Application of: Edwin Lyda

Application No.: 09/920,961

Filed: 08/03/2001

For: Distance Learning System

Date: April 6, 2007

Group Art Unit: 2623

Examiner: Tran, Hai V.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Andrew Faile, Director

REQUEST FOR REPLACING EXAMINER; EXPEDITING APPEAL

I am the attorney prosecuting the above-referenced application. As a member of the U.S. Patent Bar for over 25 years, I have always been able to work with Examiners in achieving fair results for my clients and the patent office. However, in view of the actions (or inactions) taken by the present Examiner, Hai V. Tran, I must request that this application be assigned to a different Examiner.

If you review the file history, you will understand my frustration. The most basic request, entry of a Power of Attorney, which was filed on March 24, 2005, along with an affidavit by Edwin Lyda, the inventor, was ignored for almost a year! After it was filed, Hai Tran sent at least three office actions to Mr. Lyda's previous attorneys. Each time I reminded him of the change, he failed to ensure that the Power of Attorney was entered. Finally, on March 3 and March 8, 2006, I called a supervisor, who personally made sure the document, which had been filed a year before, was entered. "Acceptance" of the power of attorney was mailed on March 9, 2006. Apparently, Hai Tran failed to understand

the importance of ensuring that USPTO correspondence was sent to the authorized representative, not to a firm that had no further business with the applicant.

Subsequent thereto, applicant filed a Notice of Appeal (3/22/06) and an Appeal Brief (4/27/06). The USPTO received the Appeal Brief on May 1, 2006, and on May 4, 2006 forwarded it to Hai Tran. More than two months later, on July 14, 2006, Hai Tran reopened prosecution, sending an office action which regurgitated his previous rejection (which had precipitated the appeal). I was unable to discern a basis for reopening prosecution since no new references were directed at the independent claims. I called Christopher Kelley, Hai Tran's supervisor, who indicated prosecution was reopened based on the need for a shored-up rejection to Claim 3, a dependent claim. In our conversation, I discussed the differences between the present claims and the Ferris reference. He suggested I fax him proposed claims which would further distinguish over Ferris, and I did so. He left a telephone message indicating it appeared we had claimed over Ferris, and he suggested I reply to the rejection with the amended claims. Over two months later, I received Hai Tran's rejection, once again citing Ferris.

I immediately reopened the appeal by filing a Notice of Appeal, followed by an Appeal Brief, which was received by the USPTO on December 4, 2006. For some reason, it was not forwarded to the Examiner until January 9, 2007. Thereafter, another two months passed without a reply. I finally telephoned Christopher Kelley to find out why Hai Tran had not filed a timely response. He directed me to Scott Beliveau, Hai Tran's acting supervisor. Mr. Beliveau had been present at an appeal conference held the week before, and he indicated that the Appeal Brief I had filed almost 3½ months earlier had been found

to be defective for two reasons:

- (1) I had sometimes used the term "applicant" instead of "appellant"; and
- (2) I had corrected a typographical error in one of the claims.

Needless to say, I was quite chagrined that I would need to file an amended brief and would have to wait several more months for the Examiner's reply (or for some other delay tactic to occur). I was also at a loss to understand why I had not been so informed much sooner; the "defects" should have been readily ascertained when Hai Tran received the brief at the beginning of January, and I could have filed a corrected brief then.

The last straw came when I received the actual Notification of Non-Compliant Appeal Brief, signed by Hai Tran. He referred to the two items mentioned by Mr. Beliveau, but he had also checked Box 4 and stated under Box 10:

"Limitation in independent claims 1, 13, 20, i.e., the mechanism operating without receiving signals eliciting a response by the user, does not correctly refers to Appellant's specification pages and line number because the referred pages and lines do not support that limitation."

Since my brief already contained the information required by Box 4, I called Mr. Beliveau, who, after reviewing the Notice, indicated that I should ignore the checkmark by Box 4 and the language under 10 about the limitations. Apparently, Hai Tran had added that requirement without discussing it with his supervisors, thinking I would not be able to file an amended brief that would comply (since I had already provided material which I viewed as satisfying the requirement).

I have no doubt that Hai Tran is doing everything he can to delay the prosecution and appeal of the present application. His office actions always contain language that is difficult to comprehend; he displays less than adequate skill in communicating in English.

His arguments are convoluted and indicate that he does not understand the claims. Both the inventor and I feel that, if someone other than Hai Tran were to read the specification, the Ferris reference, and our Appeal Brief, the claims would be found to be allowable over Ferris. The inventor is becoming increasingly disheartened because no one in the patent office (other than Hai Tran) has read the documents and, consequently, no one understands the need for and usefulness of the technology involved. Under 35 U.S.C. §§101-103, he has a right to have a patent granted (the Ferris reference has no application whatsoever to his claims). I have never before requested that an Examiner be removed from an application I've been handling. However, the events that have transpired require me to do so.

Further, in view of the lengthy delays associated with this case, I request that the appeal be expedited, to the greatest extent feasible.

Please contact me if you have any questions or comments.

Date: April 6, 2007

Respectfully submitted,

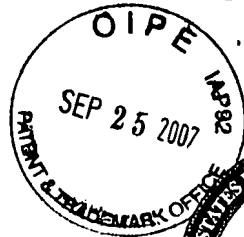


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C:\A&G\Patents\Lyda\rqexaminer

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Signature					
Typed or printed name		Mary J. Gaskin		Date 4/6/07	
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